

By Mr. SMITH of Texas: A bill (H. R. 28735) authorizing the payment of damages to persons for injuries inflicted by Mexican Federal or insurgent troops within the United States during the insurrection in Mexico in 1911, making appropriation therefor, and authorizing the Secretary of State to proceed, in conformity with diplomatic usage and international law, to secure reimbursement therefor from Mexico; to the Committee on Foreign Affairs.

By Mr. SPEER: A bill (H. R. 28736) granting an increase of pension to Richard M. Hovis; to the Committee on Invalid Pensions.

By Mr. STEENERSON: A bill (H. R. 28737) granting a pension to John A. McLaughlin; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER (by request): Memorial of the Worley Bible Class, Bethany Baptist Sunday School, Washington, D. C., extending their thanks to the House of Representatives for passing the Webb liquor bill, preventing the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. FOSS: Petition of Charles M. Stewart and other citizens of the tenth congressional district of Illinois, favoring the passage of the Kenyon-Sheppard bill preventing the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. KINDRED: Petition of the American Laundry Machinery Co., of Rochester, N. Y., favoring the passage of the Weeks bill (H. R. 27567) for 1-cent letter postage; to the Committee on the Post Office and Post Roads.

Also, petition of the National League of Government Employees, Washington, D. C., favoring the passage of House bill 20995, granting to certain employees of the United States the right of compensation for injuries sustained in the course of their employment; to the Committee on the Judiciary.

Also, petition of the Association of Eastern Foresters, Trenton, N. J., protesting against the passage of any legislation to transfer the control of the national forests to the States wherein they lie; to the Committee on Agriculture.

Also, petition of the Remington Typewriter Co., New York, protesting against the passage of the Oldfield patent law revision bill (H. R. 23417) making certain changes in the present patent laws; to the Committee on Patents.

Also, petition of the Thread Agency, New York, N. Y., favoring the passage of House bill 16663, permitting corporations, joint-stock companies, etc., to change the date of filing annual returns to the close of their fiscal year; to the Committee on Ways and Means.

Also, petition of the New York State Fruit Growers' Association, favoring the passage of the Nelson bill (S. 7208) proposing certain radical changes in the law of the United States relating to the carriage of cargo by sea; to the Committee on Interstate and Foreign Commerce.

Also, petition of the Chamber of Commerce of the State of New York, protesting against the passage of the Nelson bill (S. 7208) proposing radical changes in the law of the United States relative to the carriage of cargo by sea; to the Committee on Interstate and Foreign Commerce.

Also, petition of the Philadelphia Coal Exchange, Philadelphia, Pa., favoring the passage of legislation to repeal the mercantile-tax bill; to the Committee on Ways and Means.

Also, petition of the New York State Legislative Board, Brotherhood of Locomotive Engineers, favoring the passage of the Federal workmen's compensation bill; to the Committee on the Judiciary.

By Mr. KINKAID of Nebraska: Petition of numerous citizens of Cherry County, Nebr., favoring the passage of the Kenyon-Sheppard bill preventing the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. LAFFERTY: Petition of Albert Hart, of Leoui, Clonney & Co., favoring the passage of legislation repealing the tariff duty on sponges; to the Committee on Ways and Means.

Also, petition of the Astoria Retail Merchants' Association, favoring the passage of House bill 27567, for a 1-cent letter-postage rate; to the Committee on the Post Office and Post Roads.

By Mr. LINDSAY: Petition of the Central Federated Union of Greater New York and vicinity, New York, N. Y., relative to the payment of the crews of the Panama Steamship Line and the special privileges granted to said company, which is controlled and owned by the United States Government; to the Committee on Interstate and Foreign Commerce.

Also, petition of the Children's Aid Society, New York, favoring the passage of Senate bill 3 granting Federal aid for vocational education; to the Committee on Agriculture.

By Mr. O'SHAUNESSY: Petition of the Woman's Christian Temperance Union of Rhode Island, Providence, R. I., favoring the passage of the Kenyon "red-light" injunction bill for the cleaning up of Washington for the inauguration; to the Committee on the District of Columbia.

Also, petition of the League of Improvement Societies in Rhode Island, Providence, R. I., favoring the passage of the McLean bill granting Federal aid for the protection of all migratory birds; to the Committee on Agriculture.

Also, petition of the System Federation of the Harriman Lines, favoring the passage of legislation for enforcing the inspection of the locomotive boilers and safety appliances for railway equipment, and also an investigation by Congress relative to improving the condition of the American railway employees; to the Committee on Interstate and Foreign Commerce.

By Mr. PALMER: Petition of citizens of Berwick, Pa., favoring the passage of the Kenyon-Sheppard bill preventing the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. PUJO: Papers to accompany bill for the relief of Arthur J. Coney, sole heir of L. J. J. Coney, deceased; to the Committee on War Claims.

By Mr. RUCKER of Colorado: Petition of the Farmers' Educational and Cooperative Union of America, Denver, Colo., protesting against the passage of legislation lowering the tariff duties on sugar and other farm products; to the Committee on Ways and Means.

SENATE.

WEDNESDAY, February 12, 1913.

(Legislative day of Tuesday, February 11, 1913.)

The Senate reassembled at 12 o'clock and 40 minutes p. m. on the expiration of the recess.

Mr. CULLOM. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore (Mr. BACON). The Senator from Illinois suggests the absence of a quorum. The Secretary will proceed to call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Cummins	McCumber	Smith, Ga.
Bacon	Dillingham	McLean	Smith, Md.
Bankhead	Fletcher	Martine, N. J.	Smith, Mich.
Bourne	Foster	Myers	Smoot
Bradley	Gallinger	Nelson	Stephenson
Brady	Gamble	O'Gorman	Stone
Brandegee	Gardner	Oliver	Sutherland
Bristow	Gronna	Overman	Swanson
Brown	Guggenheim	Owen	Thomas
Bryan	Hitchcock	Page	Thornton
Burnham	Jackson	Paynter	Tillman
Burton	Johnson, Me.	Percy	Townsend
Catron	Johnston, Ala.	Perkins	Warren
Chamberlain	Jones	Pomerene	Webb
Clapp	Kavanaugh	Richardson	Wetmore
Clark, Wyo.	Kenyon	Root	Williams
Crane	La Follette	Sheppard	Works
Crawford	Lippitt	Slimmons	
Cullom	Lodge	Smith, Ariz.	

Mr. WEBB. I wish to state that my colleague [Mr. LEA] is necessarily absent from the Senate.

The PRESIDENT pro tempore. Upon the call of the roll of the Senate 74 Senators have responded to their names, and a quorum of the Senate is present.

CONNECTICUT RIVER DAM.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut.

Mr. JONES. I desire to offer an amendment intended to be proposed to the bill. I ask that it may be read.

The PRESIDENT pro tempore. The amendment will be read.

The SECRETARY. After the word "otherwise," in line 18, page 2, insert the following additional proviso:

Provided further, That if at any time said Connecticut River Co. or its assigns shall be owned or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that it shall form a part of or in any way effect any combination or be in any wise controlled by any combination in the form of an unlawful trust, or enter into any contract or conspiracy in restraint of trade in the production, development, generation, transmission, or sale of any power or electrical energy, then the permit herein granted

may be forfeited and canceled by the Secretary of War through appropriate proceedings instituted for that purpose in the courts of the United States.

The PRESIDENT pro tempore. The amendment will be printed and lie on the table.

COUNT OF ELECTORAL VOTES.

The PRESIDENT pro tempore. The hour of 12 o'clock and 50 minutes having arrived, the Senate, under the previous order made, will now proceed to the Hall of the House of Representatives to take part in the count of the electoral votes for President and Vice President of the United States.

The Senate, preceded by the President pro tempore, the Secretary, and the Sergeant at Arms, thereupon proceeded to the Hall of the House of Representatives for the purpose of participating in the count of the electoral votes for President and Vice President of the United States.

The Senate returned to its Chamber at 2 o'clock and 15 minutes p. m., and the President pro tempore resumed the chair.

Mr. DILLINGHAM, one of the tellers appointed on behalf of the Senate in pursuance of the concurrent resolution of the two Houses to ascertain the result of the election for President and Vice President of the United States, said:

Mr. President, the tellers on the part of the Senate submit the following report as the result of the ascertainment and counting of the electoral votes for President and Vice President of the United States for the term beginning March 4, 1913, and ask that the report may be entered upon the Journal of the Senate without reading.

The PRESIDENT pro tempore. Without objection, it will be so ordered.

The state of the vote for President of the United States, as delivered to the President of the Senate pro tempore, is as follows:

The whole number of the electors appointed to vote for President of the United States is 531, of which a majority is 266.

Woodrow Wilson, of the State of New Jersey, has received for President of the United States 435 votes;

Theodore Roosevelt, of the State of New York, has received 88 votes;

William Howard Taft, of the State of Ohio, has received 8 votes.

The state of the vote for Vice President of the United States, as delivered to the President of the Senate pro tempore, is as follows:

The whole number of the electors appointed to vote for Vice President of the United States is 531, of which a majority is 266.

Thomas R. Marshall, of the State of Indiana, has received for Vice President of the United States 435 votes;

Hiram W. Johnson, of the State of California, has received 88 votes;

Nicholas Murray Butler, of the State of New York, has received 8 votes.

This announcement of the state of the vote by the President of the Senate pro tempore shall be deemed a sufficient declaration of the persons elected President and Vice President of the United States, each for the term beginning March 4, 1913, and shall be entered, together with a list of the votes, on the Journals of the Senate and House of Representatives.

The report of the tellers as entered on the Journal is as follows:

The undersigned, WILLIAM P. DILLINGHAM and JAMES E. MARTINE, tellers on the part of the Senate, and WILLIAM W. RUCKER and H. OLIN YOUNG, tellers on the part of the House of Representatives, report the following as the result of the ascertainment and counting of the electoral votes for President and Vice President of the United States for the term beginning March 4, 1913:

Number of electoral votes to which each State is entitled.	States.	For President.			For Vice President.		
		Woodrow Wilson, of New Jersey.	Theodore Roosevelt, of New York.	William Howard Taft, of Ohio.	Thomas R. Marshall, of Indiana.	Hiram W. Johnson, of California.	Nicholas Murray Butler, of New York.
12	Alabama.....	12			12		
3	Arizona.....	3			3		
9	Arkansas.....	9			9		
13	California.....	2	11		2	11	
6	Colorado.....	6			6		
7	Connecticut.....	7			7		
3	Delaware.....	3			3		
6	Florida.....	6			6		
14	Georgia.....	14			14		

Number of electoral votes to which each State is entitled.	States.	For President.			For Vice President.		
		Woodrow Wilson, of New Jersey.	Theodore Roosevelt, of New York.	William Howard Taft, of Ohio.	Thomas R. Marshall, of Indiana.	Hiram W. Johnson, of California.	Nicholas Murray Butler, of New York.
4	Idaho.....	4			4		
29	Illinois.....	29			29		
15	Indiana.....	15			15		
13	Iowa.....	13			13		
10	Kansas.....	10			10		
13	Kentucky.....	13			13		
10	Louisiana.....	10			10		
6	Maine.....	6			6		
8	Maryland.....	8			8		
18	Massachusetts.....	18			18		
15	Michigan.....		15			15	
12	Minnesota.....		12			12	
10	Mississippi.....	10			10		
18	Missouri.....	18			18		
4	Montana.....	4			4		
8	Nebraska.....	8			8		
3	Nevada.....	3			3		
4	New Hampshire.....	4			4		
14	New Jersey.....	14			14		
3	New Mexico.....	3			3		
45	New York.....	45			45		
12	North Carolina.....	12			12		
5	North Dakota.....	5			5		
24	Ohio.....	24			24		
10	Oklahoma.....	10			10		
5	Oregon.....	5			5		
38	Pennsylvania.....		38			38	
5	Rhode Island.....	5			5		
9	South Carolina.....	9			9		
5	South Dakota.....		5			5	
12	Tennessee.....	12			12		
20	Texas.....	20			20		
4	Utah.....			4			4
4	Vermont.....			4			4
12	Virginia.....	12			12		
7	Washington.....		7			7	
8	West Virginia.....	8			8		
13	Wisconsin.....	13			13		
3	Wyoming.....	3			3		
531		435	88	8	435	88	8

WM. P. DILLINGHAM,
JAMES E. MARTINE,
Tellers on the part of the Senate.

W. W. RUCKER,
H. OLIN YOUNG,

Tellers on the part of the House of Representatives.

The PRESIDENT pro tempore. Unless there be objection, the Chair will direct that the certificates which have been read in the House of Representatives shall now be placed on the permanent files of the Senate.

Mr. OWEN. I wish to present a resolution of the House of Representatives of the State of Oklahoma, and ask that it be printed in the Record.

The PRESIDENT pro tempore. It is not in order. Under the unanimous-consent agreement nothing is in order except the pending bill. The Chair dislikes to make this suggestion to the Senator, but the unanimous-consent agreement confines the Senate strictly to the pending bill and to conference reports and appropriation bills.

Mr. OWEN. I was not aware of that.

INDIAN APPROPRIATION BILL.

Mr. GAMBLE. I am directed by the Committee on Indian Affairs, to which was referred the bill (H. R. 26874) making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with the various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1914, to report it with amendments. I desire to state that I will submit at a later day a report to accompany the bill.

The PRESIDENT pro tempore. The report presented by the Senator from South Dakota is within the terms of the unanimous-consent agreement. The bill will be placed on the calendar.

CONNECTICUT RIVER DAM.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut.

Mr. BRANDEGEE. When the Senate took a recess yesterday afternoon, the Senator from Colorado [Mr. THOMAS] was in the

midst of his address upon the pending bill, and gave notice that he would proceed upon the meeting of the Senate at this time. I do not see him upon the floor, and I do not know whether any other Senator would feel at liberty, in view of the notice he gave, to interrupt his address.

Mr. STONE. Mr. President, is the hour for morning business—

The PRESIDENT pro tempore. The Senate has been in recess and has reconvened as a part of the legislative day of yesterday. There is no morning business to-day until the pending measure shall be disposed of.

Mr. STONE. I ask unanimous consent—

The PRESIDENT pro tempore. That can not be done. The Senate is now operating under a unanimous-consent agreement, and nothing can be done which will vary that in any particular.

Mr. SMOOT. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Utah suggests the absence of a quorum. The Secretary will proceed to call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Dillingham	Newlands	Smoot
Bacon	Gallinger	Oliver	Stone
Bankhead	Gamble	Overman	Sutherland
Bourne	Gardner	Page	Swanson
Brady	Gore	Percy	Thomas
Brandeggee	Gronna	Perkins	Tillman
Brown	Jones	Poinindexer	Townsend
Bryan	Kavanaugh	Pomerene	Warren
Burton	Kenyon	Root	Webb
Catron	La Follette	Sheppard	Wetmore
Chamberlain	Lodge	Smith, Ariz.	
Clark, Wyo.	McLean	Smith, Ga.	
Crawford	Nelson	Smith, Md.	

Mr. WEBB. My colleague [Mr. LEA] is necessarily absent. I hope that this announcement may stand for the day.

Mr. STONE. I desire to state that my colleague [Mr. REED] is absent for two reasons—one because of the serious sickness of his wife, and the other because of very important business. I wish this announcement to stand for the day.

The PRESIDENT pro tempore. Upon the call of the roll of the Senate 49 Senators have responded to their names. A quorum of the Senate is present. The Senator from Colorado [Mr. THOMAS] is entitled to the floor.

Mr. THOMAS. Mr. President, up to the hour of adjournment yesterday I had discussed the pending measure from the general standpoint of the power of the Congress to enact it, and, at the same time, with reference to specific objections both fundamental in their character and practical in their operation. What I shall further say refers, as far as I am able to do so, to the application or the relation of the principle embodied in this measure to interests which are different from but which nevertheless are comprised within the general policy of conservation as that term is popularly understood and which is considered to be as broad and comprehensive as the material resources of the Nation. A process here involved and of interest to Connecticut finds its support largely in physical conditions wholly different from those characteristic of other parts of the country; yet they are defended by arguments and assertions identical with those which are employed to sustain a policy applied to the resources and the people of the West and without regard to our entirely dissimilar environment.

My active opposition to the measure is therefore prompted by my view of its effect upon the Western States and their interests. There is the danger to us in the use that will inevitably be made of this measure as a precedent for the exercise of similar authority under largely divergent conditions. In the far West conservation finds practical application on a very much larger scale than anywhere else, with the possible exception of Alaska. This is true by the very nature of things, because in the public-land States there is so much territory belonging to and under the control of the National Government.

Abundant provocation occurring in many parts of the country and covering a period of many years has been given and has justified the action of the Government in its commendable efforts to prevent monopoly of the public resources, and also to conserve those resources for the future. There can be no question, as I said yesterday, that in the practical operation of the national land laws and laws related to kindred subjects, abuses, various in their nature and enormous in their extent, have arisen, which abuses lie at the foundation of those enormous aggregations of property which have arrested public attention and which have aroused a very just and salutary public opinion, thereby spurring the Government to action designed for the protection of the people's heritage, preserving their resources, and administering the laws both in the letter and the spirit. I say the provocation has been abundant, and a wise

policy of law, properly and lawfully, and I may say, popularly enforced—for such a thing is easy—would meet with the hearty support of all the people of the West, who realize more fully and as vividly as those of any other section of the country, the necessity for change in many features of our public-land laws and the abandonment of previous methods of applying them or permitting them to be applied by great interests upon their own account and without regard to the general welfare.

I am, and at all times have been, an advocate of conservation, not only as an expedient, but as essential policy. I have lived in the State which I have the honor in part to represent here for a period of more than 41 years. I have witnessed its expansion from a frontier Territory of 39,000 white inhabitants to a Commonwealth of 800,000 people, during which time many of the evils which gave birth to the conservation system—if system it may be called—have been evolved from the operation of the public-land laws and from the practices of men. Contemporaneously with the development of that great State have been the institution and the operation of abuses the absence of which would have redounded to our prosperity and to the good name of the Government. What is true, Mr. President, of my own State is doubtless true of those States which also contain within their boundaries large areas of the public lands. Hence the somewhat recent assertion by the Government of a new line of domestic policy and administration met with my enthusiastic commendation, because I recognized its necessity and applauded the fact that it had become generally recognized everywhere. I want, therefore, to disabuse the public mind of that impression, which is largely prevalent in the East, that the people of the West are radically and fundamentally opposed to all governmental regulation of its own property and resources or that it presents a solid front against all forms of conservation, desiring, on the other hand, the free and continued play of the old régime, without change or control or without regard to consequences.

It may be true, Mr. President, that this impression has for its basis a reasonable foundation, in that extremists everywhere are always loudest in their advocacy of or opposition to any given question or any given measure. For the words and the opinions of the extremists are those which furnish the basis for headlines and for exciting and attractive newspaper publications. They carry further than the more sober and less extravagant sentiments of the masses of the people, whose view is confounded with that of the radical few.

We of the West believe that we are the real conservationists of the country; we think so because, living where the abuses which the conservation policy is designed to correct or to mitigate have arisen and expanded, we can best determine their character as well as the remedies which should be applied for their extinction. It was very easy and natural for the people of the Atlantic seaboard to pass judgment upon western policy and opinion as affecting Indian affairs in the old frontier days, when there was constant strife with them upon the border. We believed then, and we still believe, that the men accustomed by contact with the Indian, familiar with his character, his requirements, and conditions, alive to the dangers ever menacing the pioneers, their wives and children, exposed to sudden and unprovoked attack, were the best judges of the traits, habits, conditions, and needs of the aborigines. But those in authority generally thought otherwise, with results not always anticipated or desirable. It is that experience derived from contact and association, from observation in the immediate atmosphere of any given condition which, after all, furnishes the best basis of education, and furnishes an equipment capable of determining the best and wisest methods of procedure designed to promote a good cause or to destroy a bad one. Living in the midst of the national domain stretching in every direction from the range of the Rocky Mountains, knowing the necessities of the people there residing, and conscious of the abuses which have crept into the general administration of the land laws, we believe that we can as well—and perhaps better—determine what is necessary or expedient to our upbuilding and conservation as can those more fortunate portions of the people occupying Commonwealths whose domains are held by private ownership.

I am conscious of the fact that it may be retorted that my point of view condemns my presumption in criticizing or attempting to criticize the justice or policy of the pending measure, which relates to a water course in the oldest portion of the Nation, and which is in no sense related to the conditions which exist in the far West.

I concede freely the justice of this view, but unfortunately, as stated before, this and kindred measures are constantly used as active instances of the governmental authority over the general question of conservation, concluding our challenges both

of its legality or its wisdom, and as justifying similar or entirely different methods of procedure over all the public possessions from New England to the farther reaches of the continent. It is because of that fact that I have had the presumption to take any part whatever in this discussion. There can be no question but that the Senators from the four States directly interested in this proposed improvement are more conversant with conditions there existing than I possibly can be. There can be no question but that they can far better interpret the wants, the wishes, and the interests of their respective constituents than can I; but when a measure they advocate can be invoked to justify the enactment of one which applies to the people of my section which they and I oppose, it becomes essential to resist, because the ultimate evil is far more serious than the immediate good designed to be secured. Hence we must regard the pending bill as an integral part of a great governmental policy, comprehending and comprising universally every phase of what is called governmental conservation. If it rests upon the assumption of an authority, the exercise of which may involve serious consequences to any section of the Union, I would be remiss in the performance of a public duty if I remained passive because ignorant of the wishes or the welfare of the people of New England. The avowed purpose of all these measures of legislation, of all these enterprises, and of all these concessions is conservation of national resources for the prevention of monopoly, a term as broad as the territorial limits of the Republic and extending beyond the seas into and including our insular possessions thousands of miles away.

We of Colorado have no navigable streams either in a general or in a limited sense. The great rivers which find their way ultimately into the Mississippi Valley on the east and into the Gulf of California upon the west and southwest have their birth in the summits of the Rocky Mountains. The State of Colorado rests upon the crest of the continent. The melting snows of its mountains flow impartially toward the Pacific and the Atlantic seaboard. The streams are small in dimensions and turbulent in character. Therefore to call them, by the widest stretch of the imagination, "navigable streams" is to indulge in a poetic license that the gravity of this question would, if no other objection existed, prevent.

Notwithstanding the absence of any navigable streams within our borders, the national policy regards the waters of the State in some respects as it regards those of navigable streams; not, perhaps, in its requirements when used for the generation of electricity so much as in the direction of its use for reclamation purposes; which, of course, is one phase of the use of water for irrigation. As to hydro-electric purposes, the Government pursues in the West a method of procedure entirely opposite to that policy which prevails in the Eastern States. In the East it assumes to grant licenses for the use of the water, to which it asserts title of some sort; in the West it assumes to withdraw power sites from entry. In the one case it proposes to exact a revenue by the imposition of certain conditions upon the use of the energy in the stream under a claim of ownership, while in the other it proposes to derive a revenue by a grant of the right to use the land which it owns, the water being merely incident thereto, and justifies its conduct or policy in both instances by the same line of reasoning. So far as reclamation projects are concerned, it assumes to appropriate the water outright as a private user does, and then forbids any interference with its action on the part of later proprietors or previous ones who have not actually diverted the waters to a beneficial use.

Perhaps the most prominent and possibly the only contradiction involved in this situation is that the authority given to Congress to regulate commerce, sovereign in its character, is so applied through the interests and demands of conservation in the East that the Government must exercise power over navigation as though it was a proprietary right. Federal ownership of the national domain, on the other hand, is essentially proprietary in character, but the demands of conservation require the Government, in carrying out its policy, to regard and administer the trust as a sovereign attribute. For example, in the acquisition of water by the Government for purposes of reclamation—one of the most commendable and, in my opinion, the most commendable of all forms of conservation—the Government exercises a power which is analogous to, if indeed it is not, eminent domain, but without compensation; while in the East it never assumes authority to carry out and to enact a measure of this sort, except such as is derived from the commerce clause of the Constitution.

Something was said during the course of the discussion by the Senator from Ohio [Mr. BURTON]—I do not pretend to give his exact language upon the subject—which conveyed to my mind the idea that in his opinion the Government could not

under the commerce clause of the Constitution extend its control of the waters of streams not navigable in character. I referred yesterday to a question of the Senator from Iowa [Mr. CUMMINS] to the Senator from Ohio as to the power of Congress to invest a corporation undertaking to improve a navigable stream under Federal law with power to condemn property within the limits of the State where the grant of Congress was to be carried into operation or exercised, and I think it was in that connection that the reference of the Senator from Ohio to which I refer was made.

I think he also stated that, in his opinion, the Government could, for the purpose of making effective an authority of this kind, confer upon the agency or the contracting party the right to condemn such property as might be necessary to make it effective, of course, upon the theory that such power was necessary to effectuate the project of improving navigation. I deny broadly the power of Congress to invest a corporation, whether a creature of the State in which its operations are to be conducted or a creature of some other State doing business in the State where the business is to be conducted through the comity and courtesy of the laws of the latter State, with the right to exercise any power of eminent domain whatever. Such corporation must derive such authority from the State in which it is to be exercised, unless the process of condemnation is invoked solely to acquire property absolutely essential to the public improvement as distinguished from the private enterprise. That is to say, the power of Congress to confer such an authority must be limited to the power which Congress itself could exercise if it, instead of the agency selected, was making the improvement on its own account and at its own expense; yet it has been contended that such a power may be given to companies operating in States where similar Federal concessions have been made to the use of the waters in nonnavigable rivers, and in the State of Iowa particularly.

Now, Mr. President, what is the situation in the West as regards the operation of the laws and policy of the Government of the United States upon certain of our natural resources? I have attempted—not very clearly perhaps—to illustrate the relation which governmental authority asserts between measures of the sort now pending and other measures which are also instituted and sought to be made effective through the so-called general policy of conservation. The waters of the natural streams of the arid States—it is so provided in the constitution of our State—belong to the people thereof, subject to appropriation for beneficial uses. They do not belong to the General Government, not even where the streams traverse the public domain, except in so far as they may not have been or may not be appropriated by the citizen. They belong to the people for appropriation for beneficial uses. That constitutional declaration, Mr. President, although it has received the sanction of the National Legislature and has been expressly recognized and approved by the Supreme Court of the United States, is not a grant from the Government to the people; it is merely declaratory of a condition preexisting. In the very nature of things the waters of the natural streams in an arid country must belong to the people, because otherwise it would not be habitable; otherwise there could be no population, no civilization, neither development nor conservation of natural resources.

In my school days, the geography which I studied pictured the continent west of the Missouri, almost to the Pacific Ocean, as "The Great American Desert." It was represented to the young mind of that generation as being as desolate and bleak as Sahara or the Desert of Gobi. It was uninhabited and uninhabitable, and must ever remain a space upon the map which thoroughfares might traverse, but in which human kind could not subsist. That was the natural result of the lack of complete knowledge and information as to the character of the soil and the climate of that region and the extent to which the land could be fertilized by irrigation.

But as population extended farther and farther to the west and pressed upon the resources of nature the desert disappeared and was made to blossom as the rose, through the application to its brown and bleak surfaces of the waters of the country. A common law sprang into existence, as it always does in Anglo-Saxon communities, in harmony with the necessities of man, of the peculiarities of soil, and of climate and other conditions; and under the imperious requirements of these conditions the doctrine of riparian rights—I will not say "disappeared," because it never existed; it never could have obtained recognition under those conditions. Therefore the declarations of our constitution and of other States relating to waters were merely declaratory or confirmatory of a preexisting right as absolute and unquestioned and as necessary to human habitation as the breath of the air to human life.

Prior to the existence of an organized community, away back in the days of the administration of James Buchanan, before the Territory of Colorado had been organized, when society existed, if at all, in a fragmentary condition, without written laws, without any cohesive attributes; when every man stood for himself, and against only the common enemy, the waters were diverted from our streams and carried away from the riparian owner or occupant and utilized upon lands owned or in the possession of the man diverting the water for his essential requirements. Out in California, where the discovery of gold caused an enormous migration in 1849, the precious metal in the sands and on the mountainsides required the use of water for its separation from the other substances that it might be given to commerce and industry, thereby enriching the people everywhere. To do this required the diversion of water from the channels of the streams; and that diversion necessarily grew into a property right accruing to him who made the diversion and applied the water to a beneficial use, the latter being as absolutely essential to ownership as the act of diversion, and the two together constituting the basis of the property right.

So in 1866, on the occasion of the enactment of the first mining law, Congress expressly recognized this right, and the Supreme Court of the United States declared the statute to be a mere declaration or confirmation by Congress of a legal status already existing, and needing no such declaration for its creation or enforcement. So out of these conditions grew the necessity of ownership in the water, without reference to its origin or its natural flow, by the people of that section of the country.

Mr. BORAH. Mr. President—

The PRESIDING OFFICER (Mr. STONE in the chair). Does the Senator from Colorado yield to the Senator from Idaho?

Mr. THOMAS. Certainly.

Mr. BORAH. I desire to ask the Senator's opinion, in connection with the subject he is discussing, as to this proposition: Has the Senator any doubt but that a private individual may appropriate the water of a stream running by Government lands?

Mr. THOMAS. Not a particle.

Mr. BORAH. And thereby appropriate it to the individual's use, to the exclusion of the Government as a proprietor and a riparian owner?

Mr. THOMAS. I have no doubt whatever of it, Mr. President; the only limitation being that fixed by the Supreme Court of the United States in the Rio Grande case, in One hundred and seventy-fourth United States.

Mr. BORAH. I had in mind the Rio Grande case, where Mr. Justice Brewer uses some language which to me is a little bit difficult to understand.

Mr. THOMAS. I am coming to that later on, because unfortunately the phraseology employed by that court has been utilized as the basis of an authority to control the use of our waters which can not be reconciled with the right of the citizen to divert them, there being no riparian right in the country where the diversion is made.

Mr. BRANDEGEE. Mr. President, while the Senator is on that point, will he allow me to ask him a question?

Mr. THOMAS. Certainly.

Mr. BRANDEGEE. I do not know whether or not I correctly understood the Senator, and I wish to make sure. If a natural person is the riparian proprietor upon one side of a stream and the Government is the riparian proprietor of the land upon the other side, did I correctly understand the Senator to say that the Government does not have all the rights of ownership that the natural person has?

Mr. THOMAS. Not exactly that. There is no such thing as a riparian proprietor in Colorado, or in Idaho, or in Wyoming, or in Arizona in the sense that the term is used and applied here. What I said was that the Government had no title to the water running through the public domain, provided it had been or provided it should be appropriated by some user and diverted from the Government land to his own land and applied to a beneficial use.

Mr. BRANDEGEE. Of course, Mr. President, we are all aware of the doctrine of prior appropriation that obtains in some of the Western States, particularly the arid States. But if what the Senator has just said is his answer to the question of the Senator from Idaho [Mr. BORAH], then I did not understand the question asked by the Senator from Idaho. I thought I restated to the Senator from Colorado substantially the question asked by the Senator from Idaho.

Mr. THOMAS. No; no.

Mr. BRANDEGEE. It is my mistake, then, Mr. President.

Mr. THOMAS. The situation is well expressed by the Supreme Court in the case of Boquillas Co. against Curtis, a case

arising in Arizona and reported in Two hundred and thirteenth United States, page 349. It sums up the law in that case with this sentence:

The right to use water is not confined to riparian proprietors. Such a limitation would substitute accident for a rule based on economic considerations.

The ownership of the waters of the arid States, being in the people of the State and being absolute and unquestioned except in so far as the Government may interfere for purposes of controlling or improving navigation, is not subject to control, directly or indirectly, by national authority, save as decided in the case of *United States v. Rio Grande Co.* (174 U. S., p. 80). There the Supreme Court held, in substance, that this ownership of water is subject to two conditions. In the first place, it can not be so used as to impair the navigability of streams. The second condition is stated in the part of the opinion to which the Senator from Idaho referred. I had not intended to give the exact language, but perhaps I had better do it, as I have it here, so that there can be no question about the correctness of my statement.

I read from a document entitled "Federal Control of Water Power," on page 80. It is a citation from the *Rio Grande* case:

Although this power of changing the common-law rule as to streams within its dominion undoubtedly belongs to each State, yet two limitations must be recognized: First, that in the absence of specific authority from Congress a State can not by its legislation destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its water, so far, at least, as may be necessary for the beneficial uses of the Government property. Second, that it is limited by the superior power of the General Government to secure the uninterrupted navigability of all navigable streams within the limits of the United States. In other words, the jurisdiction of the General Government over interstate commerce and its natural highways vests in that Government the right to take all needed measures to preserve the navigability of the navigable watercourses of the country even against any State action.

The first exception or condition I will repeat:

That in the absence of specific authority from Congress a State can not by its legislation destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its water, so far at least as may be necessary for the beneficial uses of the Government property.

If we may concede, for the sake of argument, that this could not be done "in the absence of specific authority from Congress," the reply is that the act of 1866 and the act of 1870, the recitals of the constitution of the State of Colorado, sanctioned by the approval of the President and of Congress, and the recognition of its validity by the Supreme Court of the United States, give abundantly the specific authority from Congress which here is declared to be essential to the exercise of the right to divert this water from Government lands.

But there is another limitation upon the condition as it is here formulated:

A State can not by its legislation destroy the right of the United States . . . to the continued flow of its water, so far at least as may be necessary for the beneficial uses of the Government property.

What is "a beneficial use of the Government property"? If the Senator from Idaho files upon a homestead which is intersected by a stream of running water and obtains a patent from the Government for his filing, he gets the land; but he gets the water only if he has appropriated it under the laws of the State. And if I, prior to the patent or after the patent, and before his appropriation, file upon the water so running through that quarter section and divert it to other territory for beneficial uses, the water becomes mine, and does not pass to the Senator from Idaho by virtue of his filing or by virtue of his patent.

Mr. WORKS. Mr. President, I should like to ask the Senator from Colorado whether he means to say that the holder of the property gets his title to the water by virtue of the patent?

Mr. THOMAS. No; that is quite the contrary of what I intended to say. What passes by the patent is the land. The water is acquired by appropriation, and whoever appropriates that water owns it if he applies it to a beneficial use. Hence, my impression is that what was meant by the learned justice who wrote this opinion, and who, perhaps, was better qualified to pass upon questions like this than any of his contemporaries, was that, as far as might be necessary for the beneficial uses of the Government in some scheme of reclamation, perhaps, or its devotion to the improvement, if you please, of the land bordering upon the stream through some method of its own and within its authority, that right could not be destroyed by State legislation in the absence of specific Federal authority.

Mr. SMITH of Arizona. Mr. President—

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Arizona?

Mr. THOMAS. Certainly.

Mr. SMITH of Arizona. Did the court probably mean that the governmental use might be in those cases in which the Gov-

ernment has the absolute title by dedication of land to a governmental purpose?

Mr. THOMAS. It might be.

Mr. SMITH of Arizona. May not that very language mean that if the Government had such title, as in the case of a fort, for instance, or an arsenal, you might not divert from that; but could the Government itself obtain title to that water, even for its own governmental purposes, without first taking it from the stream?

Mr. THOMAS. Except by appropriation. That has been determined in a case, the name of which I can not now recall. It is mentioned in the document which I hold in my hand. The facts in the case, as I recollect them, were that the Government made an appropriation of water in connection with one of its western military posts. Afterwards the remaining water comprising the volume of the stream was appropriated and utilized by a citizen for his own purposes. The Government afterwards sought to use all the water of the stream for its own purposes, its post having outgrown the volume of its appropriation. The courts declared that it could not do this unless it condemned the right which had been acquired through the operation of the State laws by the citizen who had made and used the appropriation.

I may say that if this first exception to the extent of the title of the people to the waters of the State should be carried beyond the suggestions which I have made, and the suggestion which was also made by the Senator from Arizona [Mr. SMITH], its operation would come in direct conflict with a number of later decisions of the same court upon the same subject, and I think would also directly contradict the general doctrine in the Kansas-Colorado case, to which I shall refer later on. Perhaps I had better do it now, because it is germane to this part of the discussion.

The decision in the case of Kansas against Colorado is one of the great opinions of the Supreme Court of the United States. To my mind it easily ranks with the most notable judicial pronouncements of that great tribunal, and as time passes, I believe that fact will be more and more recognized; perhaps I should say particularly with reference to its definition of the powers of the Government and the distinction it so clearly draws between those powers and the reserved powers of the States.

The Arkansas River has its headwaters in that part of the Rocky Mountains included within the boundaries of the State of Colorado. It runs in a southeasterly direction, crossing the western boundary line of Kansas, which is the eastern boundary line of Colorado, and continues in its course southeasterly, traversing the southerly part of the State of Kansas. That section of the Arkansas Valley within the boundaries of Colorado is one of the most productive and fruitful regions in the world. It has been populated and cultivated within the past 25 or 30 years, prior to which time it contained comparatively few settlers. It depends entirely for its prosperity and productiveness upon the application of the waters of the river to the soil, and as a consequence these waters have been appropriated several times over and made to do duty as far as is possible to the end that the area of cultivation may be as large as conditions permit.

The State of Kansas filed this bill in the Supreme Court of the United States, declaring that the appropriations in the State of Colorado and the consequent diversions of the waters of the Arkansas River resulted in great damage and injury to the people of the State of Kansas and also to the State of Kansas as a proprietor of lands bordering on the stream. It asserted the old riparian doctrine as one of the bases of its action. It also declared its right to have the waters of the stream delivered at the State line in the same volume that would flow eastward if the river and the surrounding country were still in a state of nature; in other words, that the people of the State of Colorado could not diminish the volume of that stream to the injury of the State of Kansas. This presented an issue the success of which as against the people of the State of Colorado would have resulted in the practical depopulation of four or five great agricultural counties and would have practically restored to the desert the area which had been wrested from it. As a consequence it was the most important controversy in which the State or any of its people had been involved.

The Government of the United States asked to intervene in that case upon the ground that it was the owner of a large area of land in the Arkansas Valley and its tributaries, and that it was engaged in the work of reclamation under acts of Congress, in consequence of which it asserted an interest in the waters of the stream and of the tributaries to it of such a nature and of such a character as not only to justify but to require its intervention for the protection and preservation of its own property and also as a common sovereign interested in

the outcome of a very serious question at issue between two of the States of the Union and which at the same time might affect its property interests.

Testimony was taken by the respective parties to the suit for a period of nearly two years. The case was heard in the Supreme Court under suspension of the rules, whereby the time of argument was largely extended. The decision was that the State of Kansas had not proved that it had suffered any injury; that the law of riparian ownership or proprietorship had no existence in Colorado; that the Government of the United States had no such property in the running streams of the State, as it asserted, and, as a consequence, was not a party in interest. It also declared that the reclamation act of Congress was invalid because ultra vires, except in so far as it was applicable to the Territories which were under the immediate dominion of Congress.

I might, if I had the time and the Senate had the patience, read at length from this opinion. But I will ask merely the privilege of inserting in the CONGRESSIONAL RECORD two or three pages of it.

The PRESIDING OFFICER (Mr. JOHNSON of Maine in the chair). Without objection, it is so ordered.

The matter referred to is as follows:

But it is useless to pursue the inquiry further in this direction. It is enough for the purposes of this case that each State has full jurisdiction over the lands within its borders, including the beds of streams and other waters. (*Martin v. Waddell*, 16 Pet., 367; *Pollard v. Hagan*, 3 How., 212; *Goodtitle v. Kibbe*, 9 How., 471; *Barney v. Keokuk*, 94 U. S., 324; *St. Louis v. Myers*, 113 U. S., 566; *Packer v. Bird*, 137 U. S., 661; *Hardin v. Jordan*, 140 U. S., 371; *Kaukauna Water Power Co. v. Green Bay & Mississippi Canal Co.*, 142 U. S., 254; *Shively v. Bowlby*, 152 U. S., 1; *Water Power Co. v. Water Commissioners*, 168 U. S., 349; *Kean v. Calumet Canal Co.*, 190 U. S., 452.) In *Barney v. Keokuk*, supra, Mr. Justice Bradley said (p. 338):

"And since this court, in the case of *The Genesee Chief*, 12 Id., 443, has declared that the Great Lakes and other navigable waters of the country, above as well as below the flow of the tide are, in the strictest sense, entitled to the denomination of navigable waters and amenable to the admiralty jurisdiction, there seems to be no sound reasons for adhering to the old rule as to the proprietorship of the beds and shores of such waters. It belongs to the States by their inherent sovereignty, and the United States has wisely abstained from extending (if it could extend) its survey and grants beyond the limits of high water."

In *Hardin v. Jordan*, supra, the same justice, after stating that the title to the shore and lands under water is in the State, added (pp. 381, 382):

"Such title being in the State, the lands are subject to State regulation and control, under the condition, however, of not interfering with the regulations which may be made by Congress with regard to public navigation and commerce. * * * Sometimes large areas so reclaimed are occupied by cities and are put to other public or private uses, State control and ownership therein being supreme, subject only to the paramount authority of Congress in making regulations of commerce and in subjecting the lands to the necessities and uses of commerce. * * * This right of the States to regulate and control the shores of its tidewaters and the land under them is the same as that which is exercised by the Crown of England. In this country the same rule has been extended to our great navigable lakes, which are treated as inland seas; and also in some of the States to navigable rivers, as the Mississippi, the Missouri, the Ohio, and in Pennsylvania to all the permanent rivers of the States; but it depends on the law of each State to what waters and to what extent this prerogative of the State over the lands under water shall be exercised."

It may determine for itself whether the common-law rule in respect to riparian rights or that doctrine which obtains in the arid regions of the West of the appropriation of waters for the purposes of irrigation shall control. Congress can not enforce either rule upon any State. It is undoubtedly true that the early settlers brought to this country the common law of England, and that that common law throws light on the meaning and scope of the Constitution of the United States, and is also in many States expressly recognized as of controlling force in the absence of express statute. As said by Mr. Justice Gray in *United States v. Wong Kim Ark* (169 U. S., 649, 654):

"In this, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. (*Minor v. Happersett*, 21 Wall., 162; *Ex parte Wilson*, 114 U. S., 417, 422; *Boyd v. United States*, 116 U. S., 616, 624, 625; *Smith v. Alabama*, 124 U. S., 465.) The language of the Constitution, as has been well said, could not be understood without reference to the common law.

Mr. THOMAS. I may be pardoned for referring to the syllabus:

Kansas having brought in this court an original suit to restrain Colorado and certain corporations organized under its laws from diverting the water of the Arkansas River for the irrigation of lands in Colorado, thereby, as alleged, preventing the natural and customary flow of the river into Kansas and through its territory, the United States filed an intervening petition claiming a right to control the waters of the river to aid in the reclamation of arid lands. It was not claimed that the diversion of the waters tended to diminish the navigability of the river.

Held, that—

The Government of the United States is one of enumerated powers; that it has no inherent powers of sovereignty; that the enumeration of the powers granted is to be found in the Constitution of the United States, and in that alone; that the manifest purpose of the tenth amendment to the Constitution is to put beyond dispute the proposition that all powers not granted are reserved to the people; and that if in the changes of the years further powers ought to be possessed by Congress, they must be obtained by a new grant from the people. While Congress has general legislative jurisdiction over the Territories and may control the flow of waters in their streams, it has no power to control a like flow within the limits of a State except to preserve or improve the navigability of the stream; that the full control over those

waters is, subject to the exception named, vested in the State. Hence the intervening petition of the United States is dismissed without prejudice to any action which it may see fit to take in respect to the use of the water for maintaining or improving the navigability of the river.

I think I have read perhaps enough of the syllabus to illustrate the scope of the decision as it relates to the two fundamental questions or propositions of present interest, one being that there is no control or ownership, although the word "control" is used—perhaps because it could not be very well contended that there was ownership of a character to give the United States any standing in the courts of the country—and the other being that the right of reclamation could not rest upon any expressed power delegated to the General Government in so far as the exercise of such right be made or attempted to be made applicable to the States of the Union.

It is perhaps interesting to refer, as it is emphasized in the opinion, to the argument of counsel for the Government in this case, for it is so similar to the assertions which the extreme advocates of conservation make to justify their invasion of the powers of the States for the conservation or preservation of the natural resources. The court says:

Appreciating the force of this—

That is, of the subjects which were covered by the syllabus that I have read, and I read from page 89 of the opinion—

counsel for the Government relies upon "the doctrine of sovereign and inherent power"—

That is, that it could reclaim lands and assert its domination over waters belonging to other people by virtue of a sovereign and inherent power—

Appreciating the force of this, counsel for the Government relies upon "the doctrine of sovereign and inherent power," adding, "I am aware that in advancing this doctrine I seem to challenge great decisions of the court, and I speak with deference." His argument runs substantially along this line: All legislative power must be vested in either the State or the National Government; no legislative powers belong to a State government other than those which affect solely the internal affairs of that State; consequently all powers which are national in their scope must be found vested in the Congress of the United States. But the proposition that there are legislative powers affecting the Nation, as a whole, which belong to, although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the tenth amendment.

Then the court, in a series of statements which are absolutely incontrovertible, determines that the power asserted by the counsel for the Government of the United States does not and can not exist or be maintained upon any notion of sovereign and inherent authority, and then applies it to the facts in hand.

This very matter of the reclamation of arid lands illustrates this: At the time of the adoption of the Constitution within the known and conceded limits of the United States there were no large tracts of arid land, and nothing which called for any further action than that which might be taken by the legislature of the State in which any particular tract of such land was to be found, and the Constitution therefore makes no provision for a national control of the arid regions or their reclamation. But, as our national territory has been enlarged, we have within our borders extensive tracts of arid lands which ought to be reclaimed, and it may well be that no power is adequate for their reclamation other than that of the National Government. But if no such power has been granted, none can be exercised.

It does not follow from this that the National Government is entirely powerless in respect to this matter. These arid lands are largely within the Territories—

This decision was rendered before the admission of New Mexico and Arizona into the Union—

and over them, by virtue of the second paragraph of section 3 of Article IV, heretofore quoted, or by virtue of the power vested in the National Government to acquire territory by treaties. Congress has full power of legislation, subject to no restrictions other than those expressly named in the Constitution, and therefore it may legislate in respect to all arid lands within their limits. As to those lands within the limits of the States, at least of the Western States, the National Government is the most considerable owner and has power to dispose of and make all needful rules and regulations respecting its property. We do not mean that its legislation can override State laws in respect to the general subject of reclamation. While arid lands are to be found, mainly if not only in the Western and newer States, yet the powers of the National Government within the limits of those States are the same—no greater and no less than those within the limits of the original thirteen, and it would be strange if, in the absence of a definite grant of power, the National Government could enter the territory of the States along the Atlantic and legislate in respect to improving by irrigation or otherwise the lands within their borders. Nor do we understand that hitherto Congress has acted in disregard to this limitation.

In connection with the application of the principle of this decision to what I am about to discuss it may be well to refer to the eighth section of the reclamation act. That section was prepared, if I am correctly informed, by my distinguished predecessor in this body, Senator Teller, and was designed by him to meet a possible condition which soon developed in the

application of the requirements and provisions of the statute to the objects which it was designed to accomplish. It reads:

That nothing in this act shall be construed as affecting or intending to affect or to in any way interfere with the laws of any State of Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of the water acquired under the provisions of this act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

I can conceive of no language that could be more appropriately employed to safeguard any infraction of the laws of the State or any invasion, through the operation of the statute, of the property rights in water of the individual in the arid-land States of the West.

But let us come to the application of this law which finds justification by the same process of reasoning which is employed to justify the existence of governmental authority to enact a measure like the one under consideration.

I am told that some time ago a certain proposition relating to conservation was under discussion before the House Committee on Public Lands; that the proponents of conservation there present were confronted by this decision, and that their answer to it was that the Bureau of Forestry and the Reclamation Service had gotten far beyond this decision, as indeed they have.

Mr. SMITH of Arizona. The Senator did not doubt the correctness of the statement?

Mr. THOMAS. On the contrary, I perceived its correctness, and marveled that it should have been so candidly expressed.

I may say that the policy of control of water power in our section of the country is based upon the theory that the tributaries to the Rio Grande and the Arkansas and the Missouri Rivers in Colorado are under the jurisdiction of the General Government, under its power to control navigation, because the diversion of some of the little streamlets in the Rio Grande, for example, to these beneficial purposes might so affect the flow as to interfere with navigation somewhere between the mouth of the river and its actual head of navigation, a contingency quite as liable to occur in these days when river navigation has practically disappeared as is the possibility of supporting the exercise of such a power on such a line of reasoning.

Mr. President, I hesitate to adversely criticize the reclamation policy of the Government, because it is one of the most beneficent policies, properly administered, that the national authority has ever assumed to accomplish. It means the bringing under cultivation of large areas of land which unreclaimed are of no use whatever to human kind because of the lack of water to make them productive. They possess all the elements of fertility, moisture alone excepted, and vast sums of money must be expended, if water is secured, for the purpose of making them cultivable. The Government, and the Government alone, seems to be financially able to conduct and carry out these great enterprises.

There are several schemes now in an unfinished condition in my own State and in other parts of the West. I should feel very badly to see them abandoned or interfered with, especially where they have not thus far in any manner conflicted with the saving clauses of section 8 of the act.

But it is nevertheless apparent that in continuing the exercise of this power in the States by the General Government since the Kansas-Colorado decision it has been disregarded, and the Reclamation Bureau has proceeded, notwithstanding the decision, as it did before then, probably upon the theory that the end justifies the means. I am candid enough to confess that I would not, if I could, gratuitously interfere with them in so far as these improvements are necessary and beneficial, as practically all of them are. But the Government, in carrying out and administering the law, has gone to an extent which can find no justification in my mind, even under the most liberal construction of it that could have been made by the Supreme Court in this case in the other direction had it been sustained.

The most notable instance of this I may be pardoned for referring to. The Government is and for some years past has been engaged in constructing an enormous dam and reservoir in the southeastern portion of the State of New Mexico. It is building a structure, called the Engel Dam and Reservoir, across the Rio Grande, near the point where it becomes an international boundary between the United States and Mexico. Its purpose is to reclaim 240,000 acres of land within the boundaries, respectively, of the United States and Mexico; that is to say, there are 60,000 acres of land in Mexico, the remainder of the 240,000 acres being located in the States of Texas and New Mexico.

It is the purpose of the Government, said to be due to some treaty relation and relating to some claim of the Republic of Mexico to participation in the waters of the Rio Grande for irrigation purposes, to furnish and supply the people of that Republic with water sufficient to irrigate 60,000 acres of land.

It is, as I said, a project commendable in itself, a desirable improvement, vast in extent and in possibilities, and one which must result in great benefit to that section of the country. But it has appropriated, as an individual might attempt to appropriate, from the waters of the Rio Grande and its tributaries 2,500,000 acre-feet of water for the purpose of the enterprise.

Now, 3 acre-feet of water in that section of the country is ample for every agricultural purpose; that is to say, a body of water an acre in extent and 3 feet thick furnishes sufficient moisture, climatic conditions being duly considered, to guarantee fertility. If you multiply 240,000 by 3 the result is 720,000 acre-feet, which are ample for the purposes of that enterprise. Yet the Government has seized and holds more than three times the quantity of water needed for the enterprise and which it could not use if it would.

In making these appropriations, however, the Government of the United States has invaded the property rights of the State of Colorado and filed its appropriations upon the waters of the Rio Grande and all its tributaries within the boundaries of that State upon the theory, I presume, first, that it is necessary to the enterprise; and, second, that it has the power to obtain this water as the general sovereign from any and all States which encompass the Rio Grande and its tributaries without reference to the local welfare, and also without reference, perhaps, to appropriations made by private individuals and corporations upon the same streams and the same sources of water supply which have not actually been diverted for beneficial uses.

As a consequence, it has laid an embargo upon the use of all the waters of the Rio Grande in the State of Colorado except those which had previously been appropriated and used, to the end that a dam to be constructed, if you consider the windings and meanderings of the stream, some six or seven hundred miles away and wholly within the jurisdiction of another State may be supplied with water for irrigation purposes.

Section 8 of the reclamation act has been ignored. The property of the people of the State of Colorado, guaranteed to it by the Constitution, has been practically confiscated, and some 200,000 acres of our land which could easily be made cultivable and habitable if we could use this water ourselves must continue to remain a part of the San Luis desert.

My assertion is that this is an exercise of a power wrongfully, even if it existed, and what makes it the more unbearable is that it seems to be so unnecessary, because, Mr. President, if we were permitted to conserve these waters by building reservoirs of our own and utilizing the reservoir spaces with which nature has supplied us, we could first use and then pass this volume of water farther down the reaches of the stream without serious diminution, and the amount necessary for the Eagle Reservoir enterprise would still be quite as available as it is now, this water not being, under present conditions, susceptible of use in my State at all.

What power has the Government to do this? What clause of the Constitution of the United States directly or by necessary or other implication confers upon the Reclamation Bureau the authority to invade the sovereign State of Colorado and seize upon waters belonging to it for use in a project away down in another part of the Union and entirely within the boundaries of two other States and designed, in part, for the citizens of a foreign republic? What power has the Government under any provision of the Constitution to take the waters of the State of Colorado in order that a supply may be utilized for the reclamation of 60,000 acres of land in a foreign country? What treaty stipulation between the two countries can be found to justify this course? I concede that great benefit to the good people of New Mexico and of Texas must come from the project, but I deny the right of the Government by any system of procedure that is known or recognized to be right or lawful to carry out and to effectuate such a condition at the expense and to the injury of the people of another Commonwealth without compensation or any thought of it.

We have appealed in vain to the Interior Department for relief. Under the statutes of the United States when the waters of a stream are appropriated for reservoir and irrigation or power purposes requiring the use of the public lands, a filing must be made in the office of the Secretary of the Interior, and that filing must be approved. This requirement is mandatory upon that department, as we contend, if the law itself is com-

plied with and its purposes are to be subserved. Yet since these appropriations of the Government, since this improvement has begun, the embargo is so far extended that it is impossible to obtain the approval of any filing that may be made upon waters or on reservoir sites within the basin of the Rio Grande River inside the boundary lines of the State of Colorado, so that apart from previous appropriations there is some water everywhere, but not a drop for State development.

It was demonstrated in the Kansas-Colorado case that in the early days before the settlement of that section of country the Arkansas River disappeared in the sands some 150 miles east of the western boundary of Kansas and afterwards reappeared at the surface some distance below. It was known locally as a broken river. A remarkable phase of the testimony in that case demonstrated that as a result of irrigation, the taking of the waters out of the stream and utilizing them upon the sides of the valley, created a sort of subterranean reservoir of supply for the river, in consequence of which the waters of the stream were actually increased instead of diminished. The point where the waters of the stream sank out of sight into the sands had therefore traveled eastward, reversing the general practice of humankind to go West.

But with all these physical facts in our favor, with the law of the land for our protection, the people of the San Luis Valley, to use a western expression, are "up against it." They are practically without relief unless and until the attention of the country is concentrated upon these conditions and a halt be placed upon the march of what, in my judgment, in that particular case is the reverse of conservation.

Now, I contend that the logical result of these conditions is that if it should so happen that the appropriations of water made by the General Government for this purpose should, after the improvement is completed, for any reason be found insufficient, the reclamation bureau may confiscate the waters of the State theretofore appropriated by the citizen by a reappropriation thereof and add them to the appropriations already made under the guise of their necessity for the success of the Government enterprise. Why not? Such action differs in no material respect from the appropriations hitherto made, and both may be justified, if either can be, under a general power to do whatever the requirements of the Government project may demand, albeit the Supreme Court has otherwise declared.

Mr. FLETCHER. May I ask the Senator from Colorado a question?

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Florida?

Mr. THOMAS. Certainly.

Mr. FLETCHER. I wish to inquire whether or not the river is navigable in Colorado where these waters are attempted to be appropriated by the Government?

Mr. THOMAS. I made the statement some time ago, when perhaps the Senator was out of the Chamber, that there was no such thing as a navigable stream anywhere within the limits of my State.

Mr. FLETCHER. Does the question of riparian ownership enter into consideration?

Mr. THOMAS. It never has prevailed in that section; it is excluded by the laws of man and of nature.

Mr. FLETCHER. The Government has not reserved the shores of the river?

Mr. THOMAS. On the contrary, the Government ownership in the water, if it ever had any, has passed to the people of the State by the practices and common law of the State and by the express provision of the Constitution.

Mr. WILLIAMS. I should like to ask the Senator from Colorado a question.

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Mississippi?

Mr. THOMAS. Certainly.

Mr. WILLIAMS. The Senator mentioned where a bureau of the Federal Government has recalled a decision of the Supreme Court. Is there no way of getting before the court the question as to the right of the Federal Government to stop the further appropriation of water from the Rio Grande up in Colorado? If, for example, somebody went to work and erected a dam, the Government would have to stop it in some way, and that would precipitate a lawsuit of some manner, and if the Government did not contend that what it was proposing to do was because of the desire to improve or to preserve the navigability of the river, the question could be brought up fairly in some way, it seems to me.

Mr. THOMAS. I will say to the Senator from Mississippi that is a subject to which a number of leading lawyers in my State have been giving close and careful attention for some time.

If they have reached a conclusion I have not been informed of it. I know that the present session of the general assembly has appropriated or proposes to appropriate a fund, among other things, for the purpose of testing that question to the full. Of course, if we can not obtain relief from the courts we must obtain it through national action or go without it.

Mr. WILLIAMS. Of course you can not sue the Government of the United States.

Mr. THOMAS. Of course we can not sue the Government.

Mr. WILLIAMS. But you can make the Government of the United States sue you, or take some process against you, by just violating these orders of the bureau.

Mr. THOMAS. The Government, of course, is not the subject of a direct action. The difficulty, I think, that has presented itself to the minds of the gentlemen who are investigating the question lies in the probability that the act of the Secretary of the Interior or his subordinates in refusing to accept filings for these appropriations and reservoir sites is so far discretionary as to be beyond judicial control, and that is one of the essential conditions for immediate action. They are also considering the serious question, however—and there are some authorities, and respectable ones, in support of it—as to whether the State of Colorado or its citizens may not condemn, notwithstanding the fact that they are located upon the public domain, reservoir sites and rights of way for ditches.

Mr. WILLIAMS. But back of that is the point that if these streams are nonnavigable the United States Government as a Government has nothing to do with them, and therefore a law which would require a permit to be gotten in order to put a dam upon a nonnavigable stream, it seems to me, would be itself invalid.

Mr. THOMAS. The Senator's premises are correct, but his conclusion is not in practice. The Government does assert its right to have something to do with them in many ways. For example, a statement of Mr. Justice Brewer, to which I called attention a few moments ago, has been used as the basis of treating all those streams, because they are tributaries to navigable streams, as largely within the control and under the domination of Federal power.

Mr. WILLIAMS. I understand if the Government were to come in and say we have issued these orders or we have refused these permits, which would render the Rio Grande lower down nonnavigable or might decrease its navigability, that would be all right; but if you could meet that by showing that it would not and that that was not the real object or the effect, which is the main thing, it seems to me that the decision, so far as the Senator has read it, would not apply.

Mr. THOMAS. I think so; and yet, in my judgment, the Government is quite as logical in saying that it can control these streams through the exercise of its power over navigation as in saying to the Connecticut River Co., "We will give you a franchise on the Connecticut River and the control over property in its waters that do not belong to us." The one is the outcome of the other, or rather it finds some support in the other, which, as I have previously stated, requires me to resist the passage of that measure to the extent of my ability.

There is another manner in which the Federal authorities invade this property right of the States in their waters and the right of their citizens to appropriate the same for beneficial uses, and that is by the withdrawal of power sites from entry and patent. The Government has made what I may term, perhaps with perfect justification, a wholesale withdrawal of everything that even looks like a power site bordering upon or near streams running through the public domain. Its purpose is—and from one standpoint it may be commendable; I have no doubt it is sincere and supposed to be necessary—to require those desiring to generate power to lease these sites for a term of years upon terms to be fixed by some governmental authority, and thereby derive a governmental revenue to be utilized as in its wisdom may be determined. This policy is inspired, as I understand it, not from the desire of gain, but to restrain the forces of monopolistic control, a purpose which has my entire approval.

The use of water varies. It is manifold. In our section of the Union it is absolutely essential for domestic and for irrigation purposes. These two uses are therefore placed ahead of and made superior to all others. Water may also be appropriated for mining and for manufacturing purposes, which include appropriations for power. These are not mere abstractions; they are rights created by law, which belong to all those who desire to utilize them, the primal and absolute condition to their permanency being beneficial use. One can not appropriate water and then hold it, so that others desiring to apply it beneficially may be prevented from doing so. There is only one power in the world that I know of that can do that, or

which actually does do it, and that is the Government of the United States; in other words, the man who makes an appropriation of water must follow it by diversion and by application. If the Government holds a power site from entry and fixes terms for its lease, which terms must be complied with before the power that is latent in the body of the stream can be utilized and made effective, and the terms are not such as to address themselves to the business judgment or consent of the other contracting party, I contend that it is as much a deprivation of a property right existent and potential in the people as would be the actual seizure of visible property. It is conversion to a so-called public use followed by withdrawal without making due compensation. If we are entitled, under our Constitution, to make these appropriations, if the water belongs to the people of the State, and that fact is recognized, then the right to use it, when dependent upon the use of the land adjoining, is utterly destroyed just as soon as the right to use the land is withheld.

It may be said that the terms of the Government are easy to comply with, and I may concede it, but the Government reserves the right to change the condition imposed for its use whenever it sees fit; in other words, it exercises, or proposes to exercise, a power contingently, remittently at any time subject to the discretion, if you please, the prejudice, if you please, or both it may be, of some individual clothed with authority either by act of Congress or by an assertion of the right through so-called departmental regulations. The result is that the power sites of the West are practically nonusable. As a consequence the property which is potential in the stream and which may be made the subject of appropriation, as was stated by the Senator from Ohio the other day, is running to waste.

For my part, as I have said, I have no objection to the withdrawal in some respects, because my own opinion is that it is the State which should utilize and own these power sites, appropriate the power in the water, and furnish electric current as a public utility to the needs of the Commonwealth and of its people, but that can not be done by it or by anyone except under these terms and regulations, which may be as variable in time as the changes that occur in a revolving kaleidoscope. As a consequence it does not and can not attract; it necessarily must repel all business caution and, foresight. Instead of conserving, Mr. President, it destroys or atrophies the resources of the Commonwealth.

Conservation certainly should not, as applied, result in confiscation. But some of the phases of its operation, as applied to the activities of the West, tends to that result, albeit its energizing principle is the same as that urged in the discussion of the Senator from Ohio—the prevention of monopoly.

I assert deliberately, Mr. President, that the methods to which I have called attention, instead of preventing, tend to promote and perpetuate monopolistic conditions in the West. Many of those who favor the continued policy of the Government in that section are precisely those who to some extent have acquired, or hope to acquire, a greater or less monopolistic control of the necessities of the day. The concern which has an enormous power plant is precisely the concern which wants to see all the power sites the use of which might create competition withdrawn from public use; the man who holds enormous stretches of splendid timber land is the loudest of all advocates of conservation as it is actually applied, not because he may believe in conservation, but because it confirms him in an advantage which he has, owing to the existing conditions when the law went into effect. I have heard of some of the largest live-stock dealers in the country who believe in the leasing system, if you please, because they are in such a position financially as to give them practically a monopoly of the leasing privilege when it shall have been extended. I know of no section of the West where monopoly has been prevented or diminished as a result of the operation in practice of the system of conservation. Believing in it as firmly as I do, Mr. President, I want to see it made operative in a proper, practical, effective, and satisfactory manner.

I spoke of the extension of timber reserves yesterday as sometimes made with the design of including an area of country where a tree never grew, and never will grow, and never can grow, and all those extensions in the interest of those owning barren stretches, whereby they were enabled to exchange them for some of the best timber land of the country. I do not charge the Forestry Bureau or anybody connected with it with being responsible for those conditions or with approving them; on the contrary, I believe that they are as sincere and as well deserving, from their standpoint, a class of men and women as exist anywhere in the country. And it is only fair to say that these extensions, for the most part, preceded the organization of the bureau. The difficulty lies in the fact that enthusiasm is con-

founded with practical conditions. The consequent result is a generally widespread and constantly increasing resentment against and the unpopularity of the system itself.

The Use-book, so called, of the Forestry Bureau is a book nearly as thick as the book which I hold in my hand [exhibiting]. I think it contains rules for the regulation and operation of the department covering almost every subject under the sun. Those who come in contact with these rules are those who entertain the most irritation and resentment against the policy.

I think it is a fact in human experience which can not be denied, Mr. President, that where a given policy comes in direct contact with a part of the people who unite in repudiating that policy, resent its existence, and deny its beneficial features, there is something radically wrong either with the policy itself or with the method of its operation, or with both. I hope in this instance it is the method of operation which makes it unpopular; but certain it is that the opinions of those who experience, through immediate contact, the consequences of the operation of any given policy, and the universal state of mind which is produced in consequence of it, ought to be a pretty good index of its success or the opposite. It is also the best test of the wisdom of its methods of procedure.

In the old days of carpetbagism and reconstruction the man who came in daily contact with its operation was the best judge of its character; I think that his opinion, as the result of his experiences, was worth more than that of all other men combined; and it was the collective resentment of the great people of that section of the country toward the reconstruction régime which finally aroused the national conscience, or at least so allayed its active sympathy with the system as to enable the South to rid itself of that horrible incubus. Far be it from me, Mr. President, to contrast conservation with those awful conditions, for they are as wide asunder as the poles. I merely use the illustration as applicable to the general proposition, that it is the experience of those coming into contact with and directly affected by any given policy that should ultimately determine its nature and its character, and which, if favorable, calls for its continuance, and if otherwise for its correction, either in substance or in practice. There must be, therefore, some radical defect either in the policy—and I do not think it is so much in that—or in its application—and I think there is the difficulty—which has caused the conviction everywhere throughout the public-land States that this is a policy directed against them; an unjust policy, which retards their development and interferes with their prosperity and growth.

I sometimes wonder how the people of Pennsylvania or of New York or of Illinois would feel if one-third of the area contained within their boundaries was segregated from occupancy, was practically controlled by a central authority substantially outside of their territory, and in the operation of which policy those intrusted with its administration came in daily contact with the people of the State, producing friction, irritation, resentment, hostility, and suspicion.

I think the people of these States by imagining such a condition can well understand, if they do not approve, that dislike, to use no harsher term, of a system which practically segregates one-third of the territory of the State from settlement and largely removes it from the operation of the local laws.

Local self-government doubtless had its origin, among other causes, in the necessity of determining from the experience of the people the benefit or injury flowing from the policies operating directly upon them, coming in daily contact with them, and touching them in their various walks of life. The Government of the United States in its so-called forest policy has segregated and withdrawn millions upon millions of acres of land, stretching from the borders of Mexico on the south to the Dominion of Canada on the north. A citizen of the United States can traverse his country through sovereign States of the Union an unbroken path, practically without any obstruction, upon reserved Government domain within the physical boundaries, but without the civil jurisdiction of the State, all of which has been done in the name and in the interest of conservation.

Of course, it is asserted that a man may go upon this territory and locate an agricultural claim, and that is true; or discover and locate a mine, and that is true; but the truth lies in the fact that such is the law, while the difficulty is that these express privileges of the statute are virtually neutralized by departmental regulation. It is not the judgment of the homesteader as to the value for agricultural purposes of his 160 acres he would file upon that governs; it is the judgment of somebody connected with the Bureau of Forestry, and whose word upon the subject is almost final.

It is not the prospector, Mr. President, who discovers a mine and locates it, who may determine whether it contains gold or silver sufficient to justify development, but an employee of the

Forestry Bureau who visits it, and, after passing judgment upon it, permits or prevents the location. One can well understand what his own feelings as an American citizen would be if, with these express provisions of the law in his behalf, when he attempted to assert them, some employee of the Government should say, "By my leave, sir, alone can you make your location or perfect your entry. I will determine, and not yourself, whether the conditions exist which, under the law, give you the right to make this location."

It is the existence of these conditions which have largely modified my original views, Mr. President, upon the subject of conservation, and which I think require a halt in the direction of ultraconservation, to the end that the people of the West may continue to develop their resources and add wealth and population to the common country, and extend the area of their taxable wealth over all the territory comprised within their respective boundaries.

I have here an example of how conservation under present conditions sometimes operates. I refer to a clipping from the Saturday Evening Post, a paper published, as we all know, in the far East. It is from the issue of the 25th of January, 1913, and is so apt an illustration of conservation in practice, as contradistinguished from conservation in theory, that I shall read it into the RECORD:

SELLING GOVERNMENT TIMBER.

The Government's windmill battle against monopoly is admirably illustrated by its timber policy. Its own reports show a monopolistic situation with regard to standing timber.

An important part of the total supply, aside from that owned by the Government, is in few hands. A rise of more than 60 per cent in the price of lumber since 1897 indicates that owners of the commodity have had a leverage on the market.

Now the Government itself owns one-fifth of all the standing timber in the country, many billion feet of which are ripe for the ax and even deteriorating from overripeness. In offering this ripe timber for sale the Government "makes a close estimate of the cost of manufacturing it into boards and of the market price of the product." It then fixes a minimum selling price, based on the two foregoing factors, which will "give a fair operating profit to the purchaser on his investment, but no more."

In other words, the Government acts upon the theory that it will charge for its timber to the consumer practically all that the traffic will bear.

The words quoted are from the report of the Secretary of Agriculture.

Obviously, under this policy the Government's timber can never be sold on the market any cheaper than the monopolized timber in private hands is sold, because the Government's price is based on the market price; and the market price, of course, is fixed—or largely controlled—by private owners of timber.

That is to say, the monopolists, which the conservation policy is designed to destroy, actually fix the price at which the Government commodity is offered to the consumers of the country. It would seem to me that in practice, therefore, the Government has become a part of, instead of an opponent of, the existing monopoly in the timber lands of the great West.

Mr. SMITH of Arizona. Mr. President, if the Senator will permit me, that might help the Treasury a little, but what effect does it have on the consumers of that commodity? It takes from them an extra price and puts the money into the Treasury of the United States.

Mr. THOMAS. It does not help either, as I will proceed to show from this article:

If private owners boosted prices 50 per cent, the price of Government timber would automatically advance 50 per cent; and, though the public owns one-fifth—

The public, mind you, not the bureau—of all the standing timber of the country, it can not get lumber any cheaper than private owners offer it.

Another effect of this policy is that the Government's ripe timber is not cut, but stands and decays.

That is why I say that neither party benefits by it.

The "fair profit on his investment, but no more," which the Government offers to the timber operator, does not attract him, as is shown by the fact that it is selling only one-tenth of the timber it should sell to keep the forests in a healthy condition.

Having adopted a policy that in fact amply protects monopoly at every point, the Government then goes through a great rignmarole of restrictions and conditions designed to prevent its timber from falling into the hands of monopolists.

The whole thing beautifully illustrates our antimonopoly policy, which consists in putting a lot of words on paper and ignoring essential facts.

I heard a statement the other day while riding from my hotel to the Capitol that falls in line with the general current of this discussion. The statement was made by one gentleman to another to the effect that the Government had hitherto followed a mistaken policy in opening the mineral domain to prospecting, discovery, location, and patent; that, if it had pursued a policy of conservation from the outset, the millions of gold, of silver, of lead, and other metals wrested from the mountains by private enterprise would have constituted a revenue almost suffi-

cient to have defrayed the expenses of the Government. Mr. President, success always attracts us; we forget misfortune as rapidly as we can, even when it is brought to our immediate notice. It is the successful mine which fixes public attention and gives to the unthinking the notion that all mining locations are valuable mining properties.

If the Government had pursued any other policy than the one which has been in existence since 1866, the result would have been few, if any, discoveries of the tremendous treasure houses of metal that have since been uncovered and utilized. That policy gave and should continue to give an incentive to the prospector, prompting him to make the search for these hidden deposits and to make locations and developments accordingly. As a consequence, it enabled the Government to sell millions upon millions of acres of domain worthless for any other purpose, and shown by development to be worthless even for that one, which it could not otherwise have disposed of; for I do not think I exaggerate, Mr. President, when I say that where one mining location becomes profitable four or five thousand remain utterly barren and worthless, bringing misfortune and disappointment instead of financial success to their owners and locators. Take, for instance, the Cripple Creek mining district. It embraces about 17,000 patented mining claims, upon which millions of dollars have been expended in the search, and the vain search, for gold. Out of 17,000 perhaps 250 have been profitable. In that small percentage were found all that constitutes that great mining district. When you consider the tremendous sums of money expended in the hope of finding gold and compare them with the yield of the few locations which have proved profitable, the balance is upon the debit side of the ledger, and the Government, not the citizen, is ahead in the process. The policy in this respect pursued in the past has been conservation, in my judgment, in the best and truest sense. It is a policy which has been practically destroyed by the regulations of the Forestry Bureau, for these have resulted, among other things, in the virtual disappearance of the prospector from the Rocky Mountain region.

This policy has practically extinguished one of the hardest, most resolute, and daring class of citizens who ever contributed to the development and to the settlement of a mighty Nation. I think the present depression in mining circles in the Rocky Mountains is largely, if not entirely, due to the practical interdiction that has been laid by a mistaken process of conservation upon the energy, the ability, the courage, and the daring of that splendid class of men who ask nothing of the country except the right to explore the public domain at their own expense and to take their chances on the result.

While upon this subject let me call attention to a kindred matter. I do it for the purpose of illustrating and enforcing the causes—and they are good ones—which lie at the basis of the opposition of the people whom I in part represent here to the general policy of the Government in this direction.

The cities of Manitou and Colorado Springs, together with the suburbs in their immediate vicinity, comprise something like fifty or sixty thousand people. They are great health resorts. In the summer season not less than 100,000 people are gathered in that section of the State. Their water supply comes from the melting snows of Pikes Peak and adjacent mountains. They are entirely dependent upon it for their supply and must guard it against all impurities affecting health, for the reputation of the two places as health resorts is one of their chief assets and one of the sources of their growth and prosperity.

Experience has proven the necessity, for sanitary reasons, to obtain jurisdiction in some method over a very considerable area of country embracing this source of water supply in order that sanitary conditions may be enforced and the purity of the water supply at all times maintained. That forms the Pikes Peak Forest Reserve, and is under the jurisdiction of that department of the Government.

I charge nothing against the sincerity and good faith of these gentlemen who are in charge and who are good citizens, who administer the law as they are required to, and who do their best to make that law effective. Yet a country which attracts consumptives necessarily must be very careful about sanitary conditions, particularly in view of the recent discoveries of medical science which have convinced us that the disease is contagious, to the end that no bad results may follow to the community. Yet a great many of these unfortunate people in the summer time go and plant their tents upon the mountain sides without hindrance from the authorities; and while these transient residences may be nothing but a menace, nevertheless they may become more than a menace to the well-being of the community unless controlled by regulations to be made and enforced by the local authorities for the common good.

A bill was presented in the House of Representatives some time ago, there passed, and afterwards reported here and passed, and is now in conference committee, giving the governments of the towns of Manitou and Colorado Springs joint jurisdiction with the Government authorities over a very considerable area of territory for the purpose, and only for the purpose, of conserving their water supply. They should have the title to this territory and exclusive control over it, but they are merely given concurrent jurisdiction for that purpose. The bill was threshed out in committees and every possible objection, substantial and otherwise, was presented to it. Finally it was enacted in such form as to meet, generally speaking, I will not say the wishes, but the consent, the passive consent, both of the governmental authorities and of the representatives of the cities mentioned. As I stated, it is now in conference as a result of the failure of the House to agree to one or two amendments that were here made to the bill.

Immediately after the conference committee was appointed this letter, written upon a letterhead of the American Forestry Association—a vice president of which is the honorable Secretary of the Interior and another the Hon. Gifford Pinchot—to the conference committee, as I suppose, was called to my attention:

AMERICAN FORESTRY ASSOCIATION,
Washington, D. C., February 5, 1913.

MY DEAR SIR: May I ask your consideration of the following facts regarding a bill which threatens the gradual disintegration of the national forests and the removal of jurisdiction over the national forests by the Federal Government?

The bill (H. R. 23293) "for the protection of the water supply of the city of Colorado Springs and the town of Manitou," as amended in the Senate, where it passed on February 3, 1913, will, if enacted, practically prevent the Secretary of Agriculture from administering that part of the Pike National Forest.

It embraces an area of many thousand acres of forest land and many improvements erected thereon by the Federal Government. In the last three years the experiment station alone has cost more than \$30,000.

As shown by the reports on this bill, the arrangement to have the Secretary of Agriculture administer the areas in cooperation with the municipalities was entirely satisfactory to them.

The amendments in section 3 should be defeated. Your consideration of the matter will be appreciated by the American Forestry Association.

Sincerely, yours,

P. S. RIDSDALE,
Executive Secretary.

No movement, however commendable, no measure, however necessary, even though it may affect the lives and health of 100,000 people, is permitted to stand for a moment against the determination of this bureau to absolutely control and administer in all their aspects the forest reserves of the great West. And here, upon the threshold of the enactment of a measure which has been pressed upon the attention of the National Congress for the past three years, comes this final protest, based upon the unsupported assertion that its enactment will threaten, if it passes, the gradual disintegration of the national forests.

I want to say, Mr. President, that even if it had that effect—which I absolutely deny—the bill should appeal to the conscience and the justice of every Member of Congress in both Houses, because it is designed to give to two great communities the means of preserving their own health and their own welfare by enabling them to preserve their water supply from contamination. It is just such interferences as these, just such protests as these, that cause many people of the West to hate and to loathe the very name of conservation.

The people who inhabit these two cities are among the best, most intelligent, highly educated, and wealthy of the State of Colorado. They have the best of reasons for insisting upon the enactment of this measure. One can readily understand, by bringing the lesson home to himself, what his own opinion would be of a system containing so much of good and so much of benefit, when its administration is accompanied by such petty interferences and tyrannies as result from or attend its practical operation in the various sections of the West.

Now, let me call attention to another illustration of the manner in which the conservation policy is administered.

Mr. SMITH of Arizona. If I may interrupt the Senator, by whom is the letter signed?

Mr. THOMAS. It is signed by P. S. Ridsdale, executive secretary.

I have spoken of the acts of 1866 and 1870, I think, recognizing and confirming rights of way for the diversion of water over the public domain. The Supreme Court has frequently had occasion to treat these rights and to confirm them expressly as vested rights, as property rights. The Roaring Fork Electric Water & Power Co.—I think that is the name of it—is a corporation organized many years ago for the purpose of supplying the city of Aspen, in Pitkin County, Colo., with water and with power, and supplying the mines in that section with power as

well. Its plant was completed in 1891, and consists of an appropriation of water and a flume or canal leading from the point of diversion to the reservoir of the company, about 2 miles of which now lie within the boundaries of the Mount Sopris Forest Reserve—a reserve created years after the right had been acquired. This company, like many others, raised the money necessary for the completion of the enterprise by an issue of bonds, secured upon the plant, including the reservoir and the right of way.

I think no one will deny that that company has an absolute, positive, vested, property interest in that right of way by availing itself of a privilege given by the laws of the United States, an easement the existence of which is so clearly recognized and safeguarded that every patent issued by the Government of the United States excepts it from the operation of the grant.

But 12 months ago the Forestry Bureau demanded of this company that it should take out a permit or lease from the Government for the use of its own vested right of way across an insignificant corner of the Mount Sopris Reserve, and in effect notified the company that failing to do so it might be ejected. Conferences developed the fact that the amount demanded was so nominal as to be almost ridiculous, always accompanied, however, by the condition that at any time the Government saw fit to do so—and by the Government I mean the bureau—these terms and conditions could be changed or the grant or privilege terminated absolutely.

Of course the company was advised that it could not afford to recognize this demand, because it necessarily involved an admission that the title to this vested interest, in so far as it was included within the boundaries of the forest reserve, belonged to the Government of the United States and not to the corporation. The company offered to submit the matter to the courts upon an agreed statement of facts, but the bureau has so far declined to accept the proposition. A few days before I left the city of Denver for the city of Washington I received in my mail a copy of a letter from the head of the department in Denver to the manager of the company notifying him, in effect, that unless this permit was taken out, and taken out at once, the Government would unloose its engines of legal war and invoke the court to enforce the demand of the Forest Bureau, which every man of ordinary intelligence knows to be as unjust as it is unlawful.

I might repeat instances ad nauseum of similar character. I appeal to Senators from other States whether, if these practices prevailed in their own Commonwealths, they would not, as we do, insist that some change should be made at least in the method of administration of this policy? I justify my opposition to this measure from the State of Connecticut, because it is a part and parcel of this same system of administration, claiming the right to exercise the same authority, and justified by the same appeal, to wit, that all of these things are necessary for the prevention of monopolistic conditions.

I shall not detain the Senate, Mr. President, by any further instances illustrating the unfortunate methods which are sometimes resorted to in the supposed administration of this great public trust.

Let me say, in conclusion, that if this policy had been adopted and adhered to from the beginning of the Government, there would have been neither population nor settlement to speak of west of the Allegheny Mountains. On the contrary, that region would have remained practically undeveloped and uninhabited, or developed and inhabited by an alien people. The tendency of the American people has been westward, obeying some great instinct or impulse of human nature driving them onward. The Government in other days, wisely recognizing that impulse, and encouraging instead of opposing it, opened wide the doors of opportunity, and said not only to Americans, but to all men, "Go out and occupy and possess the domain of the country and improve it, to the end that its latent wealth may be quickened into being and contribute to the greatness and the glory of the Republic."

Responding to that privilege and that impulse, the march of empire has always been westward, to the Mississippi River and across it, through the great States of Iowa and Missouri. It has traversed the plains of the Great American Desert, converting it into one of the most prosperous and happy sections of the country, covered with a teeming population of men and women and children, anchored to the soil, having a stake in the progress and welfare of the Nation—citizens constituting that great middle class which the President of the Republic of Mexico once told me was absolutely essential to the success of republican institutions everywhere, and without which popular government is impossible.

In the section known as the public-land area of the country there is a great population. It has overcome obstacles compared with which those of the Mississippi Valley were almost as nothing. It has traversed areas that were practically without water or the means of livelihood, and has settled up the valleys and slopes of that great mountain region. The products of those States are enormous, but their growth is arrested by a governmental policy which visits the sins of monopoly upon its own citizens and endeavors to correct the evils and abuses springing out of the laws of Congress and their methods of administration by denying opportunities to the hundreds of thousands of people who are anxious to improve and devote them to the common welfare. When a people like ours are face to face with these bureaucratic conditions you can well understand that their currents of resentment may sometimes overflow the confines of prudence and of moderation.

Let me say, Mr. President, that the greatest element of conservation in this country or anywhere else is the conservation of men and of women and of children. They constitute the great asset of the Nation. We must conserve them, to do which we must utilize the resources of the Nation now and wisely and honestly and for the common benefit.

No country in the world was ever possessed of the resources and the natural wealth that have blessed and have been so conspicuous in America. Yet all those resources were here before, just as they have been since, until the white man came. The Indian was your true conservationist. He was here long before we were here. No laws, conservative or otherwise, restrained him. He was a child of nature, and lived from hand to mouth, as barbarians always do. Natural resources made and could make no appeal to his untutored mind. It was but natural, therefore, that he should have retired before the advancing hosts of the white man, whose energy and capacity had been conserved through centuries of struggle and therefore of growth and development. When the white man came in contact with these forces of nature, the union of the two made possible the growth and the population and the development of this mighty Nation. And now, in this twentieth century of man's advancement, out in the solitudes of these great reserves we find the same conditions that confronted the Indian at the time this country was first populated, with the difference that the white man is there desiring to develop them, while the conserving hand of bureaucracy lays its interdict upon him.

Conservation that does not conserve both the man and the thing is not that conservation which, in my judgment, should be the policy of this great Nation.

If, therefore, we of the West permit, without protest, aggressions of this sort, beginning in the waters of the Connecticut River, we can not expect that the Government will halt in its continuation of that policy with us, notwithstanding the fact that the conditions of nature and of environment are so radically and essentially different.

Hence I oppose this measure, because of the so-called principle which is its underlying foundation and which seems to me in its consequences to be injurious to the people of the entire country.

Mr. BRANDEGEE. Mr. President, if I may have the attention of the Senator from Arizona [Mr. SMITH], I desire to ask him a question. I understood that the Senator from Arizona was going to submit some remarks upon the pending bill at some time, and I rose to ask him if it would be convenient for him to proceed this evening.

Mr. SMITH of Arizona. No; I can not proceed this evening, both on account of my throat and my head. I should prefer not to do so. I do not know that I will take the time of the Senate at all, but certainly I do not feel inclined to proceed this evening.

Mr. BRANDEGEE. Mr. President, I desire to submit a parliamentary inquiry before making a motion. We are proceeding upon the legislative day of Tuesday. I wish to inquire whether that fact involves any question about our right to take a recess until 12 o'clock to-morrow, which is the ordinary time for convening on a calendar day. I have been informed, I do not know whether correctly or not, that when the Senate is upon a legislative day it is the custom to recess to an hour just prior to the time of convening on a regular calendar day. If that has been the custom, it was broken yesterday when we took a recess until 12.40 p. m. to-day.

The PRESIDENT pro tempore. In the opinion of the Chair it is not necessary, although it is customary, simply to avoid all question. The Chair does not think it can be a matter of doubt as to the right of the Senate to take a recess to any hour it may see fit and prolong the legislative day.

Mr. BRANDEGEE. It would give rise to no complication if we took a recess until 12 o'clock to-morrow?

The PRESIDENT pro tempore. The Chair thinks not, though the Senator may name some other hour if he prefers it.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H. R. 28283. An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1914; and

H. R. 28690. An act making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1914, and for other purposes.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the President pro tempore:

S. 8035. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors;

H. R. 24121. An act to pay certain employees of the Government for injuries received while in the discharge of their duties, and other claims; and

H. R. 28094. An act to amend section 96, chapter 5, of the act of Congress of March 3, 1911, entitled "The Judicial Code."

HEALTH STATISTICS (S. DOC. NO. 1072).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Treasury, transmitting, in response to a resolution of the 6th ultimo, certain information relative to the expense to the Government for the year 1912 of its departments, branches, or bureaus of the Health and Medical Service, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

ARMY APPROPRIATION BILL.

Mr. DU PONT. From the Committee on Military Affairs I report favorably with amendments the bill (H. R. 27941) making appropriations for the support of the Army for the fiscal year ending June 30, 1914, and I submit a report (No. 1207) thereon. I give notice that, if permitted to do so, I will call up the bill for consideration on Friday immediately after the routine morning business.

The PRESIDENT pro tempore. The bill will be placed on the calendar.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. LODGE submitted an amendment proposing to amend section 6 of the act approved July 1, 1902, relative to household and other belongings not held for sale and owned by any person in the public service temporarily residing in the District of Columbia who is a citizen of any State or Territory, and who is taxed on such personal property in such State or Territory, intended to be proposed by him to the District of Columbia appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. BRISTOW submitted an amendment proposing to appropriate \$9,000 for the completion of an addition to the post-office and courthouse building at Salina, Kans., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. SMITH of Maryland submitted an amendment authorizing the Postmaster General to admit to the mails and forward to the delivery office return-reply envelopes and post cards without stamps affixed, etc., intended to be proposed by him to the Post Office appropriation bill, which was referred to the Committee on Post Offices and Post Roads and ordered to be printed.

OMNIBUS PUBLIC BUILDINGS BILL.

Mr. CRANE submitted an amendment proposing to appropriate \$5,000 to enable the Secretary of the Treasury to procure and submit to Congress plans and estimates of cost of a pneumatic, electric, or other underground tube system of connection for the transmission of letters and messages, documents, etc., between the Capitol, office buildings of the Senate and House of Representatives, the executive departments, and other Government establishments in the city of Washington, etc., intended to be proposed by him to the omnibus public buildings bill, which was referred to the Committee on Public Buildings and Grounds and ordered to be printed.

HOUSE BILLS REFERRED.

H. R. 28283. An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1914, was read twice by its title and referred to the Committee on Agriculture and Forestry.

H. R. 28690. An act making appropriation for the support of the Military Academy for the fiscal year ending June 30, 1914, and for other purposes, was read twice by its title and referred to the Committee on Military Affairs.

Mr. BRANDEGEE. I move that the Senate take a recess until 12 o'clock noon to-morrow.

The motion was agreed to; and (at 5 o'clock p. m., Wednesday, February 12) the Senate took a recess until Thursday, February 13, 1913, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, February 12, 1913.

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

God of the ages, our fathers' God and our God, who hath never forsaken Thy children, continue to bless, guide, and protect us. We thank Thee that the name of Abraham Lincoln, the world's great commoner, will not only be hallowed to-day by the people of his country, but by all the liberty-loving people round the world. We can not exalt him, but we may exalt ourselves by keeping his memory green and by striving earnestly to follow his illustrious example. We thank Thee for the special order of the day, which illustrates in a preeminent degree the integrity of the American people in selecting a President and Vice President. Let Thy blessing, we beseech Thee, follow the outgoing President, that he may continue to be a faithful servant wherever he is called to serve. And we most fervently pray that the incoming President may be attended by Thy grace, mercy, justice, and truth; that the laws of the land may be faithfully executed and the affairs of state wisely administered; that the ties of peace between us and other peoples may be strengthened and peace and prosperity reign throughout our borders, and everlasting praise be Thine. In the spirit of Jesus Christ our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

CALENDAR WEDNESDAY.

The SPEAKER. This is Calendar Wednesday, and the unfinished business is the bill H. R. 27876.

LINCOLN'S BIRTHDAY.

Mr. RUSSELL. Mr. Speaker, this is the birthday of Abraham Lincoln, and I ask unanimous consent to have read at the desk his memorable speech made 50 years ago at Gettysburg.

The SPEAKER. The gentleman from Missouri [Mr. RUSSELL] asks unanimous consent to have read the Gettysburg speech of Abraham Lincoln. Is there objection?

Mr. HEFLIN. I reserve the right to object, for the purpose of making an inquiry. If the time is consumed between now and 1 o'clock in the reading of this address, it will not interfere with the order?

The SPEAKER. Not a particle. It will not take 10 minutes to read the address, anyway. Is there objection? [After a pause.] The Chair hears none. Without objection, the Chair will designate the gentleman from Missouri [Mr. RUSSELL] to read the address. [Applause.]

Mr. GRAHAM. Mr. Speaker—

The SPEAKER. For what purpose does the gentleman from Illinois [Mr. GRAHAM] rise?

Mr. GRAHAM. As this is the anniversary of the birthday of Abraham Lincoln, and as I come from his old home and the district he once represented in this body, I ask unanimous consent that I may address the House on the subject of Abraham Lincoln after the reading of the Gettysburg speech.

The SPEAKER. For how long?

Mr. GRAHAM. Well, 30 minutes.

The SPEAKER. The gentleman from Illinois [Mr. GRAHAM] asks unanimous consent that after the Gettysburg address is read he may have 30 minutes in which to address the House. Is there objection?

Mr. FITZGERALD. Mr. Speaker, reserving the right to object, I wish to give notice that when the proceedings by unanimous consent are finished I shall move to proceed with the regular order for to-day.

The SPEAKER. Is there objection to the request of the gentleman from Illinois [Mr. GRAHAM], from the Springfield district,